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JOHN R. ASHCROFT  
SECRETARY OF STATE  
STATE OF MISSOURI

ELECTIONS DIVISION  
(573) 751-2301

July 13, 2021

The Honorable Nicole Galloway  
State Auditor  
State Capitol Building  
Jefferson City, MO 65101

RECEIVED

JUL 13 2021

STATE AUDITORS OFFICE

RE: Petition approval request from Eric McSwain regarding a proposed constitutional amendment to Article XIX (2022-045)

Dear Auditor Galloway:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Missouri Constitution filed by Eric McSwain on July 13, 2021.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Eric S. Schmitt  
Sheri Hoffman  
Trish Vincent

County: \_\_\_\_\_

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

INITIATIVE PETITION

Page No: \_\_\_\_\_

To the Honorable John R. Ashcroft, Secretary of State for the state of Missouri:

County (or City of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 8<sup>th</sup> day of November, 2022, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and \_\_\_\_\_ County (or City of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE]

CIRCULATORS AFFIDAVIT

STATE OF MISSOURI, COUNTY OF \_\_\_\_\_, I, \_\_\_\_\_ being first duly sworn, say (print names of signers)

NAME (Signature)		DATE Signed	REGISTERED VOTING ADDRESS (Number)(Street), (City, Town Or Village)	ZIP CODE	CONG. DIST.	NAME (Printed or Typed)
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri, and \_\_\_\_\_ County (or city of St. Louis), FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY. I am at least 18 years of age. I do \_\_\_\_\_ do not \_\_\_\_\_ (check one) expect to be paid for circulating this petition. If paid, list the payer: \_\_\_\_\_, A.D.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, A.D.

Signature of Affiant (Person obtaining signatures)

Street Address of Affiant

Printed Name of Affiant

City, State and Zip Code of Affiant

Signature of Notary

Address of Notary

(Seal)

Be it resolved by the people of the state of Missouri that the Constitution be amended:

Section A. Article XIV of the Constitution is revised by adopting one new section to be known as Article XIX, Section 2 to read as follows:

## Section 2.

### 1. Purpose

This section is intended to permit the safe and legal use of cannabis by adults over the age of twenty-one and to reasonably regulate the cultivation, processing, manufacturing, and distribution of cannabis. The people of Missouri have a right to enjoy the benefits of their labor free from unreasonable regulation. This section creates a legal, regulated, and taxed cannabis industry so Missouri businesses can participate in the growing market, and the state can reduce the burden on the budget and criminal justice system caused by the prosecution and incarceration of non-violent cannabis possession and distribution.

This section is intended to make only those changes to Missouri laws that are necessary to protect consumers and businesses in the cannabis industry from civil and criminal penalties; and to allow for the responsible consumption of cannabis, combat illegal underage consumption of cannabis, and achieve other important state policy goals such as maintaining an orderly marketplace composed of state-licensed cannabis cultivators, manufacturers, transporters, hospitality establishments, and retailers. This section is not intended to allow for the unregulated public use of cannabis, driving or operating heavy machinery while intoxicated, the use of cannabis in the workplace, or the use of cannabis by persons under twenty-one years of age. This section is not intended to repeal or replace the medical marijuana market.

### 2. Adult Use of Cannabis by Consumers.

(1) Any person over twenty-one years of age may possess the following amounts of cannabis at any one time:

(a) up to eight ounces of dried unprocessed flower;

(b) up to twenty-eight grams of concentrated resin or extract; and

(c) up to four thousand milligrams of tetrahydrocannabinol in cannabis-infused products.

(2) No individual who is under twenty-one years of age may possess cannabis in any amount unless such individual is in possession of a medical cannabis patient or primary caregiver license issued pursuant to Article XIV Section 1.

(3) A person over twenty-one years of age may cultivate up to twenty-five square feet of flowering canopy of cannabis for adult use in any space owned or leased by said consumer. The space in which cannabis for adult use is being cultivated must be secured against entry by unauthorized individuals including individuals under twenty-one years of age. Such cannabis shall not be provided for sale to any individual but may be sold to a licensed cultivation, manufacturing, or retail facility.

(4) For the purposes of this section, "cannabis" means *Cannabis indica*, *Cannabis sativa*, and *Cannabis ruderalis*, hybrids of such species, and any other strains commonly understood within the scientific community to constitute cannabis, hemp, or marijuana. "Cannabis" includes resin extracted from the plant and products containing cannabis. "Cannabis" does not include industrial hemp as defined by Federal law or commodities or products manufactured from industrial hemp as defined by Federal law. "Cannabis" does not include parts of the plant that do not contain tetrahydrocannabinol (THC) or the soil or substrate in which the plants were grown.

### 2. Regulation

(1) The division of alcohol and tobacco within the Missouri department of public safety is hereby authorized to grant or deny state licenses for the cultivation, manufacture, transportation, on-



premises consumption, and sale of cannabis and cannabis containing products and paraphernalia, for any purpose other than those specified in section 1 of this article.

(2) The division is further authorized to promulgate rules and emergency rules necessary for the proper regulation and control of the cultivation, manufacture, transportation, on-premises consumption, and sale of cannabis and cannabis containing products and paraphernalia for any purpose other than those specified in section 1 of this article, and for the enforcement of this section, so long as access to cannabis is not restricted unreasonably and such rules are reasonably necessary for consumer safety or to restrict access to cannabis to only persons over twenty-one years of age.

(3) A rule or regulation shall be presumed to unreasonably restrict access to cannabis if imposes restrictions that are greater than those imposed on the manufacture and sale of alcoholic beverages.

(4) If the division fails to promulgate rules and issue licenses specific to cannabis for adult use prior to June 30, 2023, the rules and regulations for the licensing of alcoholic beverage manufacturing and sale shall apply to cannabis facilities wherever possible.

(5) The division may charge application or licensure fees to cover the cost of administering the provisions of this section. However, any fees charged shall not exceed two thousand five hundred dollars per license or license application in any single fiscal year. Application and renewal fees shall be increased or decreased each year by the percentage of increase or decrease from the end of the previous calendar year of the Consumer Price Index, or successor index as published by the U.S. Division of Labor, or its successor agency.

### 3. Licensure and Certification

(1) Applications for any cultivation, manufacturing or retail facility license, where the product being cultivated, manufactured, or sold at retail contains cannabis, shall be approved if the applicant can meet the following criteria:

(a) The applicant certifies that they are able to meet or exceed the requirements of facilities in the regulations promulgated by the division;

(b) All owners have submitted to a fingerprint background check performed not more than ninety days prior to the submission of the application and have not been convicted of any dangerous felonies or for the distribution of controlled substances to a minor;

(c) The applicant has designated a natural person as a registered agent with the Missouri secretary of state; and

(d) The applicant certifies that they will not begin operations until after a commencement inspection as required by the division.

(2) Applications for any entity seeking to be certified to test or transport cannabis, or provide for on-premises consumption of cannabis, shall be approved if the applicant can meet the following criteria:

(a) The applicant certifies that they are able to meet or exceed the certification standards in the regulations promulgated by the division;

(b) All owners have submitted to a fingerprint background check performed not more than ninety days prior to the submission of the application and have not been convicted of any dangerous felonies or for the distribution of controlled substances to a minor;

(c) The applicant has designated a natural person as a registered agent with the Missouri secretary of state; and

(d) In the case of testing certification, the applicant certifies that they will not begin operations until after a commencement inspection as required by the division.

(3) The division shall begin accepting license and certification applications not later than August 1, 2023. In order to facilitate the initial costs of regulation, the division may accept application fees beginning January 15, 2023 and shall apply such fees to applications submitted after August

1, 2023. Applications for licenses and certifications under this section shall be approved or denied by the division no later than ninety days after their submission. If the division fails to carry out its nondiscretionary duty to approve or deny an application within ninety days, the application or certification is deemed granted for one year or until revoked for good cause.

(4) There shall be no limit on the number of licenses issued by the division.

(5) A single entity may hold multiple licenses or certifications and may operate under such licenses at a single location. However, an on-premises consumption license shall not be issued for a location in which a cannabis cultivation facility, a cannabis manufacturing facility, or a cannabis retail facility is in operation.

### 3. Taxation

(1) Application and renewal fees collected by the division shall be used for the administration of this section. If such fees are insufficient to provide for the administration of this section, the division may request additional appropriation through the usual appropriation process.

(2) A tax is hereby levied upon the retail sale of cannabis for adult use sold at cannabis retail facilities within the state.

(a) The tax shall be at a rate of seven and one-half percent of the retail price.

(b) The tax shall be collected by each licensed cannabis retail facility and paid to the department of revenue. After retaining no more than two percent of the amount collected for its actual collection costs, amounts generated by the tax levied in this section shall be deposited by the department of revenue into the general revenue fund. Licensed entities making retail sales within the state shall be allowed approved credit for returns provided the tax was paid on the returned item and the purchaser was given the refund or credit.

(c) Such tax shall not be levied on wholesale sales of cannabis for adult use or any cannabis which is transferred from a cannabis retail facility to a cannabis cultivation or manufacturing facility.

(3) Except as authorized in this subsection, no additional taxes shall be imposed on the sale of cannabis for adult use.

(4) A local government may impose a retail sales taxes on the retail sale of cannabis for adult use. Such taxes shall be imposed in the same way as provided for other retail sales taxes in law. Local taxes imposed on the retail sale of cannabis for adult use shall not exceed those imposed by the same jurisdiction on the retail sale of alcoholic beverages or other retail sales whichever is higher.

### 6. Public Safety

(1) Nothing in this section shall provide immunity for negligence, either common law or statutorily created, nor criminal immunities for operating a vehicle, aircraft, dangerous device, or navigating a boat under the influence of cannabis. Evidence of the presence of inactive tetrahydrocannabinol (THC) metabolites in the person's system shall not be sufficient to show the person was actually under the influence.

(2) The legislature may pass criminal statute related to the possession, delivery, or distribution of cannabis in excess of the limits provided for in this section without the appropriate license. However, in no case shall the possession, delivery, or distribution of cannabis in an amount less than two times the limits provided for in this section be deemed a felony unless such delivery or distribution was to a person under twenty-one years of age.

(3) Any individual convicted for a crime, other than a dangerous felony or the delivery or distribution to a person under seventeen years of age and more than two years younger than the person being charged, may file for release from custody and expungement of their criminal record in the jurisdiction in which the conviction occurred. Such release from custody shall be expedited and shall be granted unless the person seeking release is incarcerated for additional crimes. Such expungement shall be granted as a matter of right and shall not affect an individual's ability to seek expungement of other offenses under the laws of this state. The supreme court shall make

available to the public free of charge forms for a release from custody or the expungement of such offenses. The filing fee for a motion or new cause of action under this subsection shall be no more than the filing fee for actions brought in the small claims court of the same jurisdiction.

(4) The presence or the smell of cannabis shall not be sufficient probable cause for a law enforcement officer to detain or search a person for reasons other than a suspected intoxication offense, or to impound or search the vehicle, residence, or other property of a consumer. Any search or arrest warrant issued for violations of this section or other cannabis laws not in conflict with this section shall require evidence of the violation and shall not be issued on the basis of the presence of cannabis alone. No search or arrest warrant shall be issued based on violations of this section or other cannabis laws not in conflict with this section that would allow law enforcement officers to enter a premises without first knocking and announcing their presence and purpose.

## 7. Local Control

(1) Local governments shall develop and adopt ordinances and policies related to cannabis licensees no later than June 30, 2023. The local government shall not adopt ordinances or policies that would impose an excessive fees or an undue burden on any one or more licensees; create an undue burden on access to consumers; or act to undermine the purposes of this section. An ordinance or policy shall be presumed to impose excessive fees or an undue burden if it imposes fees higher than or restrictions greater than those imposed on the manufacture and sale of alcoholic beverages.

(2) If the local government fails to adopt ordinances and policies specific to cannabis for adult use prior to June 30, 2023, the rules and regulations for the licensing of alcoholic beverage manufacturing and sale shall apply to cannabis facilities wherever possible.

## 8. Other Provisions

(1) All cannabis sold in Missouri shall be tested by a laboratory certified under the laws and regulation of Missouri or the similar laws and regulations of another state if interstate transportation of cannabis and cannabis containing products is not illegal under Federal law.

(2) Individuals and entities who are engaging in the acts permitted by this section and in compliance with division regulations and other provisions of law, shall not be subject to criminal or civil liability or sanctions under Missouri law including but not limited to disciplinary action against a professional license, denial of public assistance programs or public services, or denial of a license to operate a vehicle, watercraft, or other equipment.

(3) It is the public policy of the state of Missouri that contracts related to cannabis should be enforceable. It is the public policy of the state of Missouri that no contract entered into by any individual or entity shall be unenforceable on the basis that activities related to cannabis may be prohibited by federal law.

(4) No mandatory reporter under the laws of this state shall be required to report the use of cannabis by a parent or prospective parent unless such use is in violation of this section or the parent is actively endangering the health and safety of a child. A prospective foster or adoptive parent shall not be discriminated against for their use of cannabis for non-medical purposes unless such use is in violation of this section or other provisions of law not in conflict with this section.

(5) No elected official shall interfere directly or indirectly with the division's obligations and activities under this section.

## 9. Severability

The provisions of this section are severable, and if any clause, sentence, paragraph or section of this measure, or an application thereof, is adjudged invalid by any court of competent jurisdiction, the other provisions shall continue to be in effect to the fullest extent possible.